



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

February 10, 1998

Ms. Joanna R. Lippman  
Fletcher & Springer, L.L.P.  
823 Congress Avenue, Suite 510  
Austin, Texas 78701

OR98-0406

Dear Ms. Lippman:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 112483.

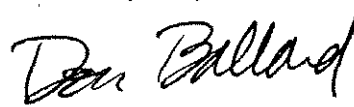
The City of Lago Vista (the "city") has received two requests for information from the same requestor seeking all records concerning any violations of law by two named individuals. The requestor also seeks the city's jail roster from March 25, 1997 through March 27, 1997. You explain that because the city "merely has a single holding cell where individuals may be held for short periods of time," no jail roster exists. The Open Records Act does not require a governmental body to make available information which does not exist. Open Records Decision No. 362 (1983). You claim that any other responsive information is excepted from disclosure by section 552.103 of the Government Code.

Although you have not raised section 552.101 of the Government Code as an applicable exception, we must consider whether the information is excepted from required public disclosure, pursuant to section 552.101. The Office of the Attorney General will raise section 552.101 on behalf of a governmental body when necessary to protect third-party interests. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987). Section 552.101 of the Government Code protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," including information protected by the common-law right of privacy. *Industrial Found. of the South v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 683-85 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). The requestor is asking for any unspecified records in which the named individuals are identified. The requestor is, in essence, asking that the city compile these individuals' criminal history. Where an individual's criminal history information has been compiled by a governmental entity, the information takes on a character that implicates the individual's right to privacy. *See United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989) (concluding that federal regulations which limit access to criminal history record information that states obtain from the federal government or other states recognize privacy

interest in such information). Similarly, open records decisions issued by this office acknowledge this privacy interest. *See* Open Records Decision Nos. 616 (1993), 565 (1990). The city, therefore, must withhold all compilations of the referenced individuals' criminal histories pursuant to section 552.101. Because of the form of the request, the city must withhold the requested information here.

Because we make a determination under section 552.101, we need not address your argument under section 552.103 at this time. We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink that reads "Don Ballard". The signature is written in a cursive, slightly slanted style.

Don Ballard  
Assistant Attorney General  
Open Records Division

JDB/ch

Ref: ID# 112483

Enclosures: Submitted documents

cc: Mr. Rick S. Habecker  
P.O. Box 4340  
Lago Vista, Texas 78645  
(w/o enclosures)